



6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064-ZA13

Request for Information on a Framework for Analyzing the Effects of FDIC Regulatory Actions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and Request for Information (RFI).

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is seeking comment on approaches it is considering to analyze the effects of its regulatory actions. The FDIC views analysis of the effects of regulatory actions and alternatives as an important part of a credible and transparent rulemaking process. The comments received will help the FDIC to strengthen its analysis of regulatory actions.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3064-ZA13, by any of the following methods:

- *Agency Web site:* <http://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments on the Agency Web site.
- *Email:* Comments@fdic.gov. Include the RIN 3064-ZA13 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* All comments received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/>—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: For further information about this request for comments, contact George French (202-898-3929), or Ryan Singer (202-898-7352), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC has had a longstanding commitment to improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals efficiently and effectively.¹ An objective and transparent analysis of the effects of regulatory actions and alternatives supports both good policy decisions and the meaningful involvement and trust of the public in the rulemaking process.

The FDIC is considering ways to improve the quality of its analysis of regulatory actions. The approaches being considered are consistent with, and supportive of, efforts to apply the FDIC’s “Statement of Policy on the Development and Review of Regulations.” In broad terms, the FDIC is considering a more structured approach to regulatory analysis and one that

¹ See the FDIC’s revised “Statement of Policy on the Development and Review of Regulations” at 63 Fed. Reg. 25157 May 7, 1998, and further revised at 77 Fed. Reg. 22771 April 17, 2013.

incorporates a number of analytical practices identified in standard references. Comments received on this RFI will be of assistance to the FDIC in strengthening its analysis of the effects of regulatory actions.

As background, the FDIC is subject to a number of statutory mandates relevant to the effects of regulations. The Administrative Procedures Act (APA) governs the procedural requirements for all federal government rulemakings. The Regulatory Flexibility Act (RFA) requires the FDIC and other agencies to review the effects of regulatory actions on small entities, identify whether the actions would have a significant economic effect on a substantial number of small entities, and if so, consider whether the purpose of the rule could be achieved in a way that mitigates adverse impacts on small entities. The Paperwork Reduction Act requires the FDIC and other agencies to identify the paperwork burdens of regulatory actions. The Congressional Review Act (CRA) requires the FDIC, or any agency promulgating a rule covered by that Act, to submit a report to each House of Congress and to the Comptroller General, that contains a copy of the rule, a concise general statement describing the rule (including whether it is a major rule), and the proposed effective date of the rule. Congress has the ability to review the rule, and potentially disapprove it. The Office of Management and Budget (OMB) determines whether regulatory actions are “major rules” for purposes of the CRA. The FDIC assists the OMB by providing, for each final rule, analysis and recommendations regarding whether that rule should be deemed major.

The FDIC performs all statutorily required analyses in connection with its rulemakings. The FDIC’s intention to improve the quality of its analysis of regulatory actions is not in response to any specific statutory mandate, but in the belief that robust analysis can enhance decision making and regulatory transparency. While this RFI is primarily directed toward issues

of analytical content, the FDIC also is considering improvements to its internal approaches to developing the analysis. Issues under consideration include procedures for inclusion of regulatory analysis staff on rule teams at a sufficiently early stage of the rulemaking process, procedures for reviewing the analysis, processes for seeking information from stakeholders, as appropriate, prior to the proposed rule stage, and processes for retrospective analysis of the effects of regulations.

While the FDIC is an independent regulatory agency and is not required to follow OMB's guidance with regard to regulatory analysis, the FDIC nonetheless views OMB Circular A-4 (henceforth, A-4 or Circular A-4) as a useful set of general principles regarding regulatory analysis.² The approaches the FDIC is considering draw in part on principles set forth in A-4, as well as other published discussions of regulatory analysis.³ It is noted, however, that A-4 draws its examples generally from health, safety and environmental regulation, and does not explicitly address banking or financial regulation. Professional judgment is needed to apply A-4's principles to the analysis of bank regulation.

A unique feature of the notices of rulemaking for banking regulations is that some are published by individual agencies and others are published jointly by multiple agencies. For joint rules, the statutorily required analyses contained in the "administrative law matters" (or similarly titled) section of the preamble are conducted by each participating agency in satisfaction of its legal mandates and labeled as such, while the common preamble represents the participating

² Office of Management and Budget, Circular A-4, "Regulatory Analysis," September 17, 2003.

³ See also "Current Guidance on Economic Analysis in SEC Rulemaking" available at https://www.sec.gov/page/dera_economicanalysis; and U.S. Commodity Futures Trading Commission, Staff Guidance on Cost-Benefit Considerations for Final Rulemakings under the Dodd Frank Act, (May 13, 2011) in U.S. Commodity Futures Trading Commission Office of the Inspector General, *A Review of Cost-Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd Frank Act*, June 13, 2011 at 34-45, available at http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig_investigation_061311.pdf.

agencies' agreed joint statement about the rule. The analysis presented in the common preambles of interagency rules accordingly reflects interagency agreement.

The remainder of this RFI describes a conceptual template for organizing the issues typically arising in bank regulation, and analyzing effects in a manner consistent with general principles for regulatory analysis. The conceptual template is a guide to analysis only in the sense of discussing the types of issues that ought to be considered in any regulatory analysis: it is difficult to be more specific in advance given the diversity of regulatory actions the FDIC undertakes. Moreover, the ability to quantify the costs, benefits and effects of regulations can be limited both by a lack of data, and by a lack of knowledge or agreement among economists about relevant channels of cause and effect or future behavioral responses. The remainder of the document should thus be understood as outlining a view of the type of regulatory analysis that should be conducted to the extent feasible. Comments are solicited on the conceptual framework in general and its individual elements.

Economic Analysis of FDIC Rulemakings

The FDIC is considering including the following in its rulemaking actions: a statement of the need for the proposed action; the identification of a baseline against which the effects of the action are compared; the identification of alternative regulatory approaches; and an evaluation of the benefits and costs from all major stakeholder perspectives, that includes qualitative discussion, and quantitative analysis where relevant and practicable, of the proposed action and the main alternatives identified by the analysis. Moreover, the analysis should be transparent about its assumptions and significant uncertainties.⁴

The Need for an Action

⁴ This broad organizational outline is consistent with approaches described in OMB Circular A-4.

The need for regulatory actions can arise from the need to implement or interpret statutory mandates, improve government processes, address market failures⁵, or otherwise address specific problems that have become evident and suggest the need to change, add or remove specific regulations. For discretionary actions, an agency's determination that it needs to take that action is a judgment it has arrived at based on the totality of the available information. A rulemaking action should include a concise summary of why the agency believes that the action is needed.

Defining a Baseline

The analysis of a regulatory action should be explicit about the baseline against which the effects of the rule are compared. Broadly speaking, the appropriate question for the analysis is how the “world with the rule” would compare to the “world without the rule.” For the analysis or evaluation of an alternative, comparisons should generally be between that alternative and the proposed or adopted regulatory action. The body of extant banking and financial regulation—but as discussed below, generally not including proposed rules—should be part of the baseline. Also, since any comparisons between the rule and the baseline will be relevant only for entities that are affected by the action, the analysis of every regulatory action should identify the set of regulated entities and other affected parties.

Questions can arise when selecting a baseline for rules that implement statutory requirements. It is sometimes noted that the “world without the rule” would still include the statute that the rule is implementing. By this reasoning, the rule itself could be viewed as having minimal effects even when the statute has large effects. Circular A-4 states that to facilitate a

⁵ “Market failure” is an economics term that refers to situations where the operation of a free market leads to an inefficient allocation of goods and services, or put another way, where individually rational decisions lead to irrational outcomes for a group. For example, deposit insurance can be viewed as a response to the market failure of bank runs, in which individually rational decisions to withdraw funds can cascade and lead to the collectively suboptimal outcome of large numbers of liquidity failures.

more comprehensive understanding of the effects of rules, analysis should include a pre-statute baseline.⁶ While potentially more comprehensive, analyzing pre-statute baselines may also involve implicitly evaluating the merits of statutes. Moreover, since the agency does not have the option of not implementing statutes, pre-statute baselines may not always produce results that inform the decisions actually available to the agency. The FDIC is interested in commenters' views on the appropriate baseline for rules that implement statutory requirements.

Other issues can arise when analyzing rules that finalize or propose rules that have been previously proposed. For some such rulemakings, it might be argued that affected entities have already adjusted their activities as a result of the previously proposed rule. Using this reasoning, if the analyst selects as a baseline the situation that includes regulated entities' adjustments made as a result of the earlier proposal, the action that is the subject of analysis might be viewed as having little effect in itself.

To provide for meaningful consideration of alternatives other than simply finalizing the original proposal, analysis should include a baseline that compares the current action to a situation without the original proposal. When much time has passed between the proposal and the action being analyzed, there may be uncertainties about whether actions regulated entities took in the intervening time were in response to the proposal, or would have been taken without the proposal. Such uncertainties should be acknowledged as part of the analysis.

Identification and Discussion of Alternatives

Rulemaking actions should include discussion of reasonable and possible alternatives considered by the FDIC or proposed by commenters. All reasonable alternatives raised by commenters should be discussed, or reasons offered for why such alternatives were not

⁶ Since the "world without the rule" includes existing law, Circular A-4 can also be viewed as supporting a post-statute baseline, and in fact it suggests that multiple baselines may be useful.

considered. Otherwise, the extent of discussion of alternatives is a matter for judgment. Some rules may have dozens or hundreds of individual provisions and discussing alternatives to all of them may not be practicable. Nonetheless, important rule provisions for which there was serious discussion of alternatives during the rulemaking process should be identified, along with the reasons for the course of action chosen. Finally, the FDIC believes that while it is useful to state and evaluate the main alternatives considered in a separate and identifiable section of the preamble, issues raised by commenters that are identified and discussed in other sections of the preamble do not necessarily need to be restated in an “alternatives” section.

Benefits and Costs of the Action and Alternatives

In reaching decisions about rules, agencies consider the effects on the public, on regulated entities, and on the achievement of statutory objectives. Decision-makers consider all these perspectives in order to arrive at a regulatory action that is in the public interest. This description of decision making corresponds to two principles that the FDIC believes are important to incorporate in its regulatory analysis: first, to consider costs and benefits from all major stakeholder and policy perspectives; and second, to attempt to identify costs and benefits relative to the concept of broad economic welfare.⁷

Systematic consideration of the stakeholders and policy interests that can benefit from, or be burdened by, a rule is a prerequisite to analyzing its effects. Bank regulations can be complex and have a broad range of effects on the achievement of statutory objectives, the manner in

⁷ A-4 does not state these principles directly, but they fairly capture important aspects of A-4. For example, in stating that non-quantified effects may be important (page 2), that analysis should focus on benefits and costs accruing to citizens and residents of the United States (page 15), that distributional effects and transfers should be clearly identified (pages 13 and 38) and that analysis should look beyond direct effects to ancillary costs and benefits (page 26), A-4 recognizes the importance of considering all perspectives on rules. In stating that analysis should focus on benefits and costs accruing to citizens and residents of the United States (again, page 15), in measuring costs and benefits by reference to the sum of consumer and producer surplus (pages 19 and 38), and in specifically excluding transfers from costs and benefits (page 38), A-4 articulates a vision of regulatory analysis as an attempt to measure net economic effects to society and not just to individual stakeholder groups.

which banks interact with customers and the type and level of credit and other financial intermediation services, which in turn can affect the broader economy and the safety and soundness of the banking system.

Identifying costs and benefits accruing to specific stakeholder groups is not the same as identifying broad economic costs and benefits. For example, whether a reduction in banks' compliance expense provides broad economic benefits is a nuanced question. As one extreme, if banks' reduced compliance spending is matched by reduced revenue or wages to compliance professionals with no change in the cost or availability of banking services, it could reasonably be said that broad economic effects are zero. If banks' reduced cost structure results in lower costs to bank customers or greater availability of financial services, the result could be increased economic output, which could reasonably be said to reflect broad economic benefits. If reduced compliance expense results in statutory goals not being achieved, a material increase in future bank failures or other adverse effects, one could reasonably classify the results as broad economic costs.

While there is no universally agreed-upon measure of broad economic welfare to use in tallying the effects of bank regulations as economic costs or benefits, the approach described in this document generally is that a goal of maximizing long-term, sustainable U.S. economic output supported by the banking industry, subject to the achievement of statutory goals and avoidance of significant adverse unintended consequences, is an appropriate concept by which to evaluate the broad economic effects of regulation.

To ensure adequate consideration of the broad range of interests that may be affected by FDIC rules, the FDIC believes it would be useful for analysts to consider the relevance of a rule from each of the perspectives listed in Table 1. These are stakeholder and policy perspectives

potentially relevant to any FDIC rulemaking. For the first five topics listed in Table 1, the stakeholder or policy perspective may be viewed in an abstract sense as the public interest in the satisfaction of the FDIC’s statutory mandates. The remaining topics reflect broader effects FDIC rules can have on banks and the public.

Table 1 Major stakeholder and policy perspectives to be considered in the analysis of FDIC rules

<i>Issue</i>	<i>Relevance of rule</i>
Effects on bank safety and soundness and public confidence	Direct effects/indirect effects/no identified effects
Effects on the treatment of bank customers or financially underserved communities	
Effects on the potential for illicit use of the financial system	
Effects on the FDIC’s statutory resolution functions	
Effects on the FDIC’s Deposit Insurance Fund (DIF)	
Effects on the availability of bank credit and other financial services	
Compliance costs or profitability effects on banks or the public	
Effects on U.S. economic performance	
Distributional effects	
Other significant issues, if identified	

Much of the regulatory analysis of any rule will consist of describing the expected or potential effects of the rule, including potential costs and benefits, from each of the relevant perspectives listed in Table 1. The first five rows of the table relate to broad categories of statutory goals. Most regulatory actions would be expected to have effects related to one or more of these categories. For any regulatory action, the analysis should consider whether and how the proposed action might affect the achievement of the relevant statutory goals. Topics of interest for such an analysis could include the effectiveness and efficiency of different ways to meet statutory goals, and anticipating potential unintended consequences.

Note that no single stakeholder perspective or policy consideration listed in Table 1 is the most important in all cases. All of the issues identified in Table 1 could be relevant to reaching a decision that is in the public interest. A general discussion of each of these issues and the goals of the analysis follows.

a) Effects on bank safety and soundness and public confidence

The FDIC has statutory responsibilities to promote the safety and soundness of FDIC-insured institutions, and to ensure that problems at troubled institutions are resolved promptly and at minimum long-term cost to the DIF. For any regulatory action, the analysis should consider explicitly whether the action has the potential to affect bank safety and soundness, describe the nature of the potential effects if any, and bring to bear evidence, to the extent available, on the potential likelihood and magnitude of the safety and soundness effects. If applicable, the analysis should discuss, and quantify to the extent practicable, potential effects on the frequency or severity of bank failures or other FDIC resolution activities. The universe of banks considered may be FDIC-supervised banks, or all insured banks, depending on the context. Historical experience with troubled or failed banks may, depending on the specific issue at hand, provide evidence on potential effects of regulatory actions. For other issues, historical experience may be of limited usefulness and the analysis would be more qualitative in nature.

b) Effects on the treatment of bank customers or financially underserved communities

Evaluating the effects of rules on bank customers or underserved communities is an important part of the rulemaking process. Many types of rules affect bank customers. Just as potential safety and soundness effects should be evaluated for any rule, so should the potential effects on bank customers.

For example, consumer protection rules generally reflect statutory goals regarding how banks should interact with customers, counterparties and the general public. Many of these rules are under the exclusive jurisdiction of other agencies, with the FDIC having enforcement authority for the banks it supervises. Some, such as the rules implementing the Community Reinvestment Act, flood insurance requirements, management interlocks rules (designed to limit potential anti-competitive practices) and rules regarding securities issued by banks that are not required to register their securities with the SEC (designed to ensure adequate information is provided to investors), are promulgated by the FDIC and other banking agencies for institutions under their respective supervision. Consumer protection rules that are unique to the FDIC include regulations designed to ensure that depositors have accurate information about the insured status of their deposits.

There are two broad types of effects on consumers that are of interest for the analysis. One is how the rule may affect the potential for consumer harm, and the other is how the rule may affect the availability and cost of financial services. Just as with the evaluation of safety and soundness issues, historical or other evidence may sometimes help shed light on the potential effects of rules on consumers, although often the analysis will be qualitative.

It also is worth emphasizing that bank customers can be affected by any rules that affect the availability and cost of financial services. In the absence of consumer harm issues, a lower cost and higher quantity of financial services would generally be viewed as a benefit to bank customers, while a higher cost and lower quantity of financial services would generally be viewed as a cost to them. The analysis should consider these types of costs and benefits. For purposes of clearly delineating distinct issues in the analysis, under the approach described in this document these types of benefits and costs would be considered under other headings in

Table 1, specifically, “Effects on availability of bank credit and financial services,” and “Effects on economic performance.”

c) Effects on the potential for illicit use of the financial system

In its examination program, the FDIC enforces compliance with the Bank Secrecy Act and other mandates designed to guard against illicit use of the financial system, and some FDIC regulations (part 326, part 353) directly support the achievement of these mandates. It also is possible that some regulatory actions in the area of cyber-security, or other regulations designed to limit operational risks, could have indirect effects on the potential for illicit use of the financial system. The analysis should consider such issues to the extent they are applicable.

d) Effects on the FDIC’s statutory resolution functions

Some FDIC rules relate to the resolution process for failing banks. Examples include rules governing the insurance coverage of various types of deposits, recordkeeping requirements, resolution plan requirements, rules for the treatment of qualified financial contracts, rules governing the use of the FDIC’s orderly liquidation authority, customer notifications in the event a bank assumes another bank’s deposits or voluntarily relinquishes its deposit insurance coverage, and other matters.

Changes to these rules could bring various types of costs and benefits. Generally speaking, changes that would increase insurance coverage would tend to reduce the likelihood of panic deposit withdrawals. This would reduce the risk of bank runs but could also be associated with greater moral hazard, and the transfer of risk to the FDIC. Changes to record keeping requirements or resolution plan requirements could increase (or decrease) information available to the FDIC to effect non-disruptive, cost-effective resolutions, while increasing (or decreasing) costs to institutions required to comply with such requirements. Rule changes that affected the

type of resolution selected could affect the gross cash flows associated with resolutions as well as their net cost. The importance and relative magnitudes of all such effects would depend on the specifics of the rule change under consideration. The analysis should consider such issues to the extent they are applicable.

e) Effects on the FDIC's DIF

Maintaining an adequate DIF and a system of assessments to ensure that the cost of bank failures is not borne by taxpayers is a core mission of the FDIC. Rules directly related to assessments and the DIF can have important effects that should be analyzed, as noted below. Other rules, particularly in the safety and soundness area, could indirectly affect insurance fund losses and hence the size and adequacy of the DIF. Consequently, the analysis of any rule should consider whether there are potential effects on the DIF.

Part 327 of the FDIC's regulations governs the calculation and collection of deposit insurance assessments and the FDIC's management of the DIF. In principle, changes to these rules could have a variety of effects. For example, changes in the target size of the DIF might affect the volatility of assessment expenses over time, with lower fund sizes expected to increase the need for large premium increases, FDIC borrowings from Treasury, or both, during periods of economic stress. Changes in the method of assessing premiums could affect the distribution of assessments paid by different types of banks, and potentially could affect incentives for banks to hold certain types of assets or incur certain types of liabilities, depending upon the specific risk gradations reflected in the assessment system. Changes in regulatory definitions of Consolidated Reports of Condition and Income (Call Report) entries used to calculate assessments could have indirect effects on assessments collected, absent offsetting changes to the assessment system.

Analysis of the effects of rules should identify such assessments-related effects and evaluate their significance.

f) Effects on the availability of bank credit and other financial services

The ability to provide credit and other financial services to the U.S. economy is one of the hallmarks of a healthy banking system. In turn, many regulations can directly or indirectly affect the cost and availability of credit and other financial services. Thus, consideration of the potential effects of changes in regulations on the supply of credit and other financial services should be part of any analysis of the costs and benefits of regulations (henceforth, “credit” will be used as a shorthand for “credit and other financial services” unless otherwise clear from the context).

An illustrative but incomplete list of regulations that could potentially affect the cost, availability and characteristics of credit include requirements regarding capital, liquidity, proprietary trading and stress testing; real estate, appraisal and mortgage underwriting regulations; loan-to-one-borrower and other concentration limits; data collection and disclosure requirements; flood insurance; the Community Reinvestment Act; and many others.

The analysis should consider the potential links between changes in the regulation and changes in the amount or nature of credit that might reasonably be expected to result. Rules that reduce the cost of providing credit would generally be expected to increase its availability, and conversely. As noted in the section titled “Effects on U.S. economic performance,” the analysis also should consider whether such rules give rise to countervailing safety and soundness or consumer harm effects. For some types of rules, historical experience or other analysis may provide insight into potential effects. Sometimes, however, there may be little in the way of

historical experience or other evidence to guide the analysis, and the discussion will primarily be qualitative.

g) Compliance costs or profitability effects on banks or the public

The analysis of rules should consider effects on banks' regulatory compliance costs and their profitability. This will facilitate identifying the effects of rules on an important class of stakeholders, and is necessary to satisfy specific statutory mandates to identify the effects of rules on small banks. The identification of costs and profitability effects on banks, along with lending effects as discussed earlier, are closely connected to evaluating the effects of rules on broader economic performance.

The analysis of compliance costs should include the identification, and quantification if possible, of: i) direct costs of compliance; ii) opportunity costs of resources used to comply with the action; and iii) effects that may arise from behavioral changes induced or incentivized by the action. Bank profitability may be affected by these changes in compliance costs, and also by changes in the volume of lending or other activities, or changes in the composition of assets or liabilities.

It may be difficult to estimate potential changes in bank compliance costs or profitability resulting from regulatory actions. Call Report-based analysis of cost and revenue trends may sometimes shed light on the potential range of effects of some rules, and the insights of subject matter experts and commenters may also be informative. For some regulatory actions, it may be beneficial to gather information from banks or other stakeholders prior to the proposal stage.

The analysis should consider the potential for changes in compliance costs or bank profitability to interact with other policy considerations in ways that affect the public interest. For example, rule changes that reduce banks' compliance expense or increase their profitability

should also be analyzed from the perspective of whether there are accompanying issues of consumer harm or adverse changes in bank safety and soundness. To ensure clear delineation of distinct issues in the analysis, these issues should be addressed under separate headings regarding safety and soundness effects and effects on consumers.

h) Effects on U.S. economic performance

The analysis should consider how the various individual effects discussed in other headings might interact to affect economic performance over time. This roughly corresponds to Circular A-4's guidance that costs and benefits should be considered from a broad economic perspective.⁸ This is not to suggest that short-term maximization of economic activity is the goal of bank regulation. Nonetheless, some concept of how rules might affect economic output through time, if this were estimable, would be a relevant consideration in evaluating the effects of rules.

If a rule results in some expansion or contraction in bank lending or other financial services, it is reasonable to expect some corresponding effect on measured U.S. economic output. For most rules such effects are likely negligible, but some rules could have effects that are important enough to warrant notice, and the analysis should consider whether this might be the case.

Next, if a rule has potentially material safety and soundness effects such that the likely frequency or severity of troubled or failed banks is affected, effects on economic output would also be expected. An increase in the volume of troubled and failed banks would be expected to have negative effects on economic output. In the extreme, banking crises may have substantially

⁸ See, for example, the A-4 discussions on pages 15, 19 and 38, to the general effect that the goal of analysis is to identify effects on all U.S. citizens and residents, that the proper measure of net benefits is the sum of producer surplus and consumer surplus, and that costs or benefits to individual groups in the form of transfers are to be viewed as distinct from, for example, "*costs to society*" (page 38, emphasis added) and therefore not to be included in costs and benefits identified as such by the analysis.

adverse spillover effects on economic output. Conversely, avoiding the adverse effects on economic output of bank failures might, all else equal, result in a steadier level of output through time. Some rules may present a tradeoff in which some potentially stimulative effects need to be evaluated relative to the possibility of longer-term adverse effects on safety and soundness, or in which some potential long-term safety and soundness benefit needs to be evaluated relative to some possible dampening of bank activity.

Similar considerations apply to rules that strengthen or weaken consumer protections. Removal of restrictions, or reductions in compliance expenses, for example, could be expected to reduce the cost of affected financial products and increase their dollar volume, with a resulting increase in economic activity. If the result could include an eventual increase in the frequency or severity of consumer harm, however, there could be ramifications to the affected consumers and thus the broader economy.

Effects on economic output of rules are inherently difficult to quantify, and even more so when there are tradeoffs involving potential future safety and soundness or consumer harm effects. Quantified estimates would generally be obtainable only by making a number of assumptions, each of which is subject to uncertainty. Transparency requires that decision makers and commenters should be informed about the assumptions, and the nature of the uncertainty surrounding such assumptions and the analysis in general.

i) Distributional effects

Changes in rules can cause a variety of distributional effects. Some rules can increase, or decrease, incomes of entities that provide services to banks. Capital requirements, by affecting the mix of debt and equity at banks, can affect the portion of bank funding costs that is tax-deductible interest. This can change banks' tax obligations, resulting in a transfer between banks

and the Treasury. Changes in deposit insurance premiums can affect the distribution across banks of the cost of funding the deposit insurance system. Consumer protection rules can potentially have distributional effects as between banks and their customers. Safety and soundness rules can increase or decrease the assessments cost to well-run banks of paying for future bank failures, and can affect the cash needed to resolve financial system stress.

Distributional effects by their nature may not be associated with any change in economic output, and it might be said of such effects that one person's benefit is another person's cost. Distributional effects nonetheless are often of great interest and concern to the parties affected by rules, decision makers need to be aware of them, and accordingly they should be identified as part of the analysis.

j) Other significant issues, if identified

Some rules may give rise to issues not covered by the list in Table 1. Examples could include rules that could have effects on wages or on state, local and tribal governments—effects that are required to be identified as part of major rule recommendations. The analysis should address these issues as applicable.

REQUEST FOR COMMENT

The FDIC seeks comment on all aspects of this RFI. With regard to the substance of regulatory analysis, the FDIC is interested both in commenters' broad views, and in examples of analytical approaches, or sources of data or other information, that may assist in the analysis of specific rules or classes of rules. Topics of interest include but are not limited to the following.

- Appropriate concepts for identifying the broad economic benefits and costs of changes in bank regulation;
- Effects of changes in regulations on the safety and soundness of banks;

- Effects of changes in regulations on the incidence of consumer harm;
- Effects of changes in regulations on the achievement of the FDIC's statutory objectives regarding failure resolution or the deposit insurance system;
- Ways to achieve statutory mandates in the most efficient and effective manner;
- Approaches to anticipating potential unintended consequences of regulatory changes;
- Effects of changes in regulations on the cost and availability of bank credit or other financial services;
- Effects of changes in regulations on the direct and indirect costs banks incur to comply with these regulations;
- How to evaluate the effects of changes in banks' compliance responsibilities on the achievement of statutory objectives regarding safety and soundness, consumer protection or other matters;
- Effects of changes in the cost and availability of bank financial services on U.S. economic output;
- Effects of changes in bank regulation on the frequency or severity of bank failures or banking crises, and consequent effects on U.S. economic output; and
- Distributional effects of changes in bank regulation.

The FDIC is also seeking comment on an issue regarding the format and presentation of regulatory analysis. Specifically, Circular A-4 recommends the use of accounting tables to summarize the analysis.⁹ Such tables are intended to identify key costs and benefits of rules, including costs and benefits that are monetized, quantified but not monetized, and not quantified.

⁹ See Circular A-4, pages 44-47.

The FDIC believes there are arguments for and against the use of such tables to summarize the analysis of bank regulations. On the one hand, there often may be an insufficient basis for quantifying key costs and benefits associated with banking rules. The result may be that such tables could tend to be sparse, in the sense of containing few or no numbers. Comparisons between quantified and non-quantified benefits and costs in such tables could be misleading, and quantified estimates could only be understood relative to a clear discussion of underlying assumptions and uncertainties. There also may be costs or benefits that do not easily fit into a standardized tabular format, so that the rigidity of the table might make it more difficult to present the analysis than in a textual narrative.

On the other hand, including such tables in a regulatory analysis could potentially provide a high-level snapshot of how the FDIC viewed key costs and benefits of the rule in one place. Completing such tables may also serve to encourage a more systematic consideration of the effects of rules, including drawing distinctions between effects on specific stakeholder groups, distributional effects and transfers, and broad economic benefits and costs.

The FDIC is interested in commenters' views on the usefulness of accounting tables such as those found in OMB Circular A-4 for presenting the results of the analysis of changes in bank regulations.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 19, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

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